

REMARKS

Claims 1-3, 5, 7-12, 21, 22 and 24-26 are now present in this application. Claims 1, 5, 8 and 11 are amended. Claims 24-26 are added.

No new matter is involved.

I. Personal Interview

Applicant acknowledges with appreciation the courtesies extended by Examiner Paul T. Chin to Mr. Robert J. Webster, Applicants' undersigned representative, during the personal interview conducted on May 4, 1005. During that interview, Examiner Chin stated that if Applicant added the subject matter of claim 4 to claim 1, as amended in a proposal faxed to Examiner Chin on April 29, 2005, that amended claim 1 would be patentable over the references applied in the rejections of the claims. Applicants' undersigned representative acknowledges that the prior art discussed at the interview included Ward, Hale, Fathauer and Liegel.

II. Rejection Under 35 U.S.C. §112, 2nd Paragraph

Claims 5, 6 and 11 stand rejected under 35 U.S.C. § 112, 2nd Paragraph. This rejection is respectfully traversed.

Claims 5 and 11 have been amended to depend, respectively, from claims 2 and 9, to provide proper antecedent basis for the claim terminology in issue in this rejection of claims 5 and 11.

Claim 6 has been canceled as being redundant with the manual switch recited in claim 1.

Reconsideration and withdrawal of this rejection is respectfully requested.

III. Rejections Under 35 U.S.C. §102

Claims 1-4, 6, 7 and 21 stand rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent 5,359,942 to Ward. This rejection is respectfully traversed.

A prior art reference anticipates the subject of a claim when the reference discloses every feature of the claimed invention, either explicitly or inherently (see, In re Paulsen, 30 F.3d 1475, 1478, 1479, 31 USPQ2d 1671, 1675 (Fed. Cir. 1994), In re Spada, 911 F.2d 705, 708, 15 USPQ2d 1655, 1657 (Fed. Cir. 1990), Hazani v. Int'l Trade Comm'n, 126 F.3d 1473, 1477, 44 USPQ2d 1358, 1361 (Fed. Cir. 1997) and RCA Corp. v. Applied Digital Data Systems, Inc., 730 F.2d 1440, 1444, 221 USPQ 385, 388 (Fed. Cir. 1984).

Initially, Applicants respectfully note that claims 4 and 6 are canceled.

Claim 1 has been amended to positively recite a combination of features including a hydraulic device adapted to be operated while being suspended from a crane, wherein the device is a hydraulic dumpster, the first member is a door on the dumpster and the cylinder is pressurized to open the door (features found in canceled claim 4).

Examiner Chin has indicated that claim 1, amended to include those features, is patentable over the art applied in the rejections of record.

Accordingly, Applicants respectfully submit that the combination of elements as set forth in independent claim 1 is neither disclosed nor suggested by Ward, or any other reference applied in the rejection of Applicants' pending claims.

Accordingly, claim 1, as amended, is patentable over all of the applied art of record.

Moreover, because dependent claims 2, 3, 7 and 21 depend from claim 1 and contain all of the features of claim 1, claims 2, 3, 7 and 21 are not anticipated by Ward.

Reconsideration and withdrawal of this rejection is respectfully requested.

Claims 8-10 and 12 stand rejected under 35 U.S.C. § 102(b) as anticipated by U.S. Patent 3,647,255 to Hale et al. ("Hale"). This rejection is respectfully traversed.

Claim 8, as amended, positively recites a combination of features, including the subject matter recited in originally filed claim 4. Hale does not disclose such a combination of features.

Examiner Chin indicated that the combination of features recited in claim 4 render claim 4 patentable over the applied art. Applicant has added

the subject matter of claim 4 to claim 8 and respectfully submits that the combination of features positively recited in claim 8, as amended, is patentable over any of the applied references for the same reason that claim 1, as amended to include the features of original claim 4, is patentable over any of the applied art of record.

Accordingly, the rejection of claim 8, as amended, is improper and should be withdrawn.

Claims 9, 10 and 12 are patentable over any of the applied art of record because those claims include the positively recited combination of features recited in claim 4, which the Examiner has indicated is patentable over the applied art of record.

Reconsideration and withdrawal of this rejection of claims 8-10 and 12 is respectfully requested.

IV. Rejection Under 35 U.S.C. § 103

Claim 5 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Ward in view of Re. 36,685 to Bounds. This rejection is respectfully traversed.

Ward does not anticipate claim 1, as amended, from which claim 5 depends, as acknowledged by Examiner Chin during the aforementioned interview.

Bounds discloses a railroad hopper car having a discharge opening having an adjustable steel plate 27.

Even if Ward were modified by Bounds to include a steel enclosure 25, the suggested reference combination would not meet, nor render obvious, the claimed invention because of the acknowledged deficiencies of Ward.

Reconsideration and withdrawal of this rejection of claim 5 is respectfully requested.

Claim 11 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Hale in view of Re. 36,685 to Bounds. This rejection is respectfully traversed.

Hale does not anticipate claim 8 as amended, from which claim 11 depends, at least for the reasons stated above.

Bounds discloses a railroad hopper car having a discharge opening having an adjustable steel plate 27.

Even if Hale were modified by Bounds to include a steel enclosure 25, the suggested reference combination would not meet, nor render obvious, the claimed invention because of the aforementioned deficiencies of Hale with respect to amended claim 8.

Furthermore, these references are substantially different and there is no proper reasoning presented to motivate one of ordinary skill in the art to modify a grappling hook assembly to include a hopper car enclosure at all, let alone to

provide a hopper car enclosure made of metal for the grappling hook of Hale. The details of such a modification are missing from the rejection and Applicants respectfully submit that the Office Action fails to provide any, let alone sufficient, motivation to one of ordinary skill in the art to change a grappling hook assembly into a hopper car assembly.

Reconsideration and withdrawal of this rejection of claim 11 is respectfully requested.

Claim 22 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Hale in view of U.S. Patent 5,624,237 to Prescott. This rejection is respectfully traversed.

Claim 22 depends from amended claim 8 and is not anticipated by Hale for the reasons stated above regarding amended claim 8.

Prescott is applied, allegedly, because it discloses a pump switch with “on,” “off” and “close” positions, supposedly shown in Fig. 3. The Office Action does not explicitly indicate which portions of the switch shown in Fig. 3 comprise the three positions, and Applicant cannot find them. It appears to Applicants that switch 14 has only open and close positions.

Accordingly, even if it were obvious to modify Hale in view of Prescott, it would not be obvious to modify Hale to achieve the claimed invention.

Furthermore, Prescott deals with a water pump overload and the Office Action has not demonstrated why one of ordinary skill in the art would turn to

Prescott to modify Hale, especially when Hale shows no need for a different switch of any type, let alone of the double pole type disclosed by Prescott.

Accordingly, the Office Action fails to make out a *prima facie* case of obviousness of the claimed invention recited in claim 22.

Reconsideration and withdrawal of this rejection of claim 22 is respectfully requested.

Claims 1-3, 5-12, 21 and 22 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent 3,858,728 to Fathauer in view of U.S. Patent No. 5,634,778 to Liegel et al. ("Liegel"). This rejection is respectfully traversed.

Claim 6 is canceled, thereby mooting the rejection with respect to claim 6.

Claim 1 has been amended to include the features of original claim 4 and, as such, is acknowledged by Examiner Chin as being patentable over Fathauer in view of Liegel. Accordingly, claim 1, as amended, is patentable over Fathauer and Liegel.

Claims 2, 3, 5-12, 21 and 22 depend from claim 1 and, thus, are patentable over the applied art for the reasons that claim 1 is admittedly patentable over the applied art

Accordingly, this rejection of claims 1-3, 5-12, 21 and 22 is improper and should be withdrawn.

V. New Claims

Claims 24-26 are added. Support for these claims is found throughout Applicants' originally filed disclosure including, for example, Figs. 2A, 2B, 3A, 3B, 5, 6A, and 6B, and their associated disclosure in the specification.

None of the applied references show these detailed structural features, such as U-shaped rails, recited in these claims. Moreover, because these claims depend from claim 8, which is patentable over all of the applied art of record for reasons stated above, Applicants respectfully submit that claims 24-26 are patentable for this additional reason.

VI. Conclusion

All of the stated grounds of rejection have been rendered moot. Applicants therefore respectfully request that a full and complete response has been made to the outstanding Office Action, and as such, the present application is in condition for allowance.

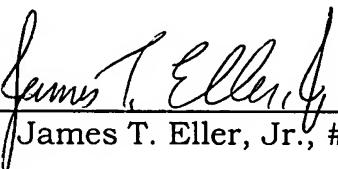
If the Examiner believes, for any reason, that personal communication will expedite prosecution of this application, the Examiner is invited to telephone Robert J. Webster, Registration No. 46,472, at (703) 205-8076, in the Washington, D.C. area.

Prompt and favorable consideration of this Amendment is respectfully requested.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. §§1.16 or 1.17; particularly, extension of time fees.

Respectfully submitted,

BIRCH, STEWART, KOLASCH & BIRCH, LLP

By: 
James T. Eller, Jr., #39,538

P.O. Box 747
Falls Church, Virginia 22040-0747
(703) 205-8000

JTE/RJW:gf
[Handwritten signature]